

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Nora Chanko	Team: Squad #3	CCRB Case #: 201801115	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 02/08/2018 6:25 PM	Location of Incident: [REDACTED]	Precinct: 40	18 Mo. SOL 8/8/2019	EO SOL 8/8/2019	
Date/Time CV Reported Fri, 02/09/2018 1:16 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 02/09/2018 1:16 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Malachi Mckenith	02680	945983	040 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Ariel Balbi	07658	963389	040 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Malachi Mckenith	Off. Language: Police Officer Malachi McKenith made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	[REDACTED]
B.POM Malachi Mckenith	Force: Police Officer Malachi McKenith tightly handcuffed § 87(2)(b)	[REDACTED]
§ 87(4-b), § 87(2)(g)	[REDACTED]	[REDACTED]

Case Summary

§ 87(2)(b) filed this complaint with the CCRB via phone on February 9, 2018.

At approximately 6:25 p.m., § 87(2)(b)'s son who was 12 years old at the time, was in the § 87(2)(b) located at § 87(2)(b) in the Bronx after having been arrested for menacing in the second degree. While in the juvenile room at the stationhouse, PO Malachi McKenith of the 40th Precinct allegedly said, "Shut up, you bitch," towards § 87(2)(b). (**Allegation A: Offensive Language,** § 87(2)(g)) PO McKenith also allegedly tightened § 87(2)(b) handcuffs after he had initially applied them, (**Allegation B: Abuse of Authority,** § 87(2)(g)) § 87(2)(b) was later released to § 87(2)(b).

§ 87(2)(g), § 87(4-b)

Video footage was obtained regarding this incident, but did not capture the alleged FADOs.

Findings and Recommendations

Allegation (A) Offensive Language: Police Officer Malachi McKenith used offensive language towards § 87(2)(b) based on the gender of § 87(2)(b)

§ 87(2)(b) stated that after being arrested, he was taken back to the stationhouse by PO McKenith and PO Vega. While on the way to the stationhouse, and during his arrest processing at the stationhouse, he and PO McKenith argued and spoke disrespectfully towards each other. PO McKenith brought § 87(2)(b) to the juvenile room. § 87(2)(b) asked why he was in the stationhouse, and PO McKenith said, "Shut up, you bitch." No one else was present while PO McKenith said this. (Both § 87(2)(b) and § 87(2)(b) alleged that PO McKenith used profanity towards § 87(2)(b) at other points during the incident, but they did not provide sworn statements to the investigation, § 87(2)(b) did not allege this, and the body-worn camera footage did not show any profanity being used during those portions of the incident. As such, no allegation was pleaded regarding § 87(2)(b) and § 87(2)(b)'s statements.)

PO McKenith initially did not remember this incident, but after being told about some details from the initial arrest, his memory was refreshed, and he remembered transporting § 87(2)(b) back to the stationhouse, but did not remember their interactions at the stationhouse. Portions of PO McKenith's body-worn camera footage from the incident were reviewed and refreshed his memory about the car ride and their interactions at the desk, but he did not recall entering the juvenile room or having any additional interactions with § 87(2)(b). PO McKenith clarified that he was not denying entering the juvenile room, he just did not recall doing so. PO McKenith denied saying, "Shut up, you bitch." PO McKenith did not recall using any profanity when speaking to § 87(2)(b) and said that he "usually" does not use profanity. PO McKenith's body-worn camera footage ends while he is by the doorway to the juvenile room, and no additional footage was returned (01 Board Review). PO McKenith said that from his understanding, he was supposed to record arrests, the behavior of arrestees at the desk, and anyone's behavior if they were "acting unruly" or "running off at the mouth." PO McKenith did not know whether he was supposed to record in juvenile rooms.

PO Balbi was at the desk when PO McKenith brought § 87(2)(b) into the stationhouse. After a few minutes, PO Balbi went into the juvenile room to process another individual's arrest on a computer there. A couple of minutes later, PO McKenith brought § 87(2)(b) into the juvenile room. § 87(2)(b) cursed at PO McKenith, and PO McKenith responded in an aggressive way and told him that he had to be respectful. PO McKenith was in the juvenile room for a few minutes before PO Nunez took over § 87(2)(b) arrest processing, and then left. PO Balbi did not remember PO McKenith coming back into the room. PO Balbi was in the room until 11:00 p.m., though he stepped out of the room multiple times for parts of the arrest processing, and said PO McKenith could have entered and spoken to § 87(2)(b) while he was gone. PO Balbi never saw PO McKenith back in the room, and § 87(2)(b) never made comments to PO Balbi that PO McKenith had entered again. PO Balbi did not recall PO McKenith saying, "Shut up, you bitch," nor did he hear PO McKenith use any profanity or offensive language based on gender or sex towards § 87(2)(b).

It is undisputed that § 87(2)(b) and PO McKenith had verbal disputes throughout their interactions, but PO McKenith denied saying, "Shut up, you bitch," to § 87(2)(b) and did not recall using any profanity towards him. § 87(2)(b) said that no one else was present during this time, and PO Balbi did not recall PO McKenith making the alleged statement. § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Allegation (B) Abuse of Authority: Police Officer Malachi McKenith tightly handcuffed

§ 87(2)(b)

§ 87(2)(b) said that from his position in the juvenile room, he could see into the cell area. § 87(2)(b) was seated on a bench, and his hands were handcuffed to a pole near the bench. At some point he stood up and talked to a friend he saw in the cell area. PO McKenith told § 87(2)(b) to sit down, which he did, but he kept looking at his friend in the cell area. PO McKenith said, "Since you wanna move so much, I'm going to tighten them," and then tightened the handcuffs on § 87(2)(b) hands, and on the bar so that he could not move at all. The handcuffs left a purple mark on his wrists. § 87(2)(b) asked PO Balbi to loosen the handcuffs, but he did not do anything. During a subsequent phone statement, § 87(2)(b) said that no one else was in the room when his handcuffs were tightened (02 Board Review).

PO McKenith did not recall there being any issue with § 87(2)(b) standing up or moving around, and said that no cell areas are visible from within the juvenile room. As discussed above, PO McKenith did not remember entering the juvenile room. PO McKenith denied tightening § 87(2)(b) Peter's handcuffs.

PO Balbi stated that PO McKenith handcuffed § 87(2)(b) to the bench by one hand. PO McKenith told § 87(2)(b) to stay still, and he cursed PO McKenith out. PO McKenith did not do anything else. PO Balbi did not see PO McKenith adjust the handcuffs at all, though he noted his back was to them, so he could not tell whether PO McKenith did so. As discussed above, PO Balbi left the room periodically and said it was possible that PO McKenith returned to

the room while he was not there. § 87(2)(b) complained that the handcuffs were tight, and after PO Balbi took him to the bathroom, he handcuffed him to the bench and § 87(2)(b) said they were not tight. PO Balbi did not hear PO McKenith tell § 87(2)(b) that he would tighten his handcuffs because he was moving so much, nor did he see PO McKenith adjust his handcuffs.

§ 87(2)(b) alleged that PO McKenith tightened his handcuffs while they were alone in the juvenile room. PO McKenith denied tightening his handcuffs, and PO Balbi did not see him do so. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g), § 87(4-b)

§ 87(2)(b), § 87(2)(g), § 87(4-b)

§ 87(2)(b), § 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (05 Board Review).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (06 Board Review).
- PO McKenith has been a member of service for 10 years and has been a subject in 12 CCRB complaints and 50 allegations, of which eight were substantiated:
 - 201308493 involved substantiated allegations of a threat of arrest and offensive language (ethnicity) against PO McKenith. The Board recommended Instructions and the NYPD imposed Command Discipline B and Instructions.
 - 201400407 involved a substantiated allegation of physical force against PO McKenith. The Board recommended Command Discipline B, which was imposed by the NYPD.
 - 201706698 involved substantiated allegations of threats of arrest (two), a threat of force, retaliatory arrest, and stop. The Board recommended formalized training, and the NYPD had not yet imposed discipline.

Mediation, Civil and Criminal Histories

- Both § 87(2)(b) and § 87(2)(b) declined to mediate this complaint.
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (07 Board Review).

- According to the OCA, § 87(2)(b) has no history of convictions in New York City (08 Board Review).
 - As of November 27, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint by § 87(2)(b) (09 Board Review).
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Squad No.: 3

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date